

### **REMARKS**

In the present amendment, applicant has amended claim 1 and added new claims 32-33. Accordingly, claims 1-33 are currently pending. Support for the amendment to claim1 can be found in the specification as filed, *inter alia*, in paragraph [0021]. Support for new claims 32-33 can be found in the specification as filed, *inter alia*, in table 1.

In the parent case, U.S. Application Serial Number 09/924,017, claims 1-11, 13-25, 27-28 and 31 were rejected under 35 U.S.C. §102(b) as allegedly being anticipated by Katz et al. (U.S. Patent No. 4,792,456). Furthermore, claims 12, 26 and 29-30 were rejected under 35 U.S.C. §103(a) as allegedly obvious over Katz et al. In order to expedite prosecution, applicant addresses the Examiner's rejection below, and request the Examiner to consider the following comments.

According to the Examiner, Katz et al. discloses coating leavening agents with hydrogenated vegetable oil. The examiner contends the composition of Katz et al. would possess the same property as the claimed invention since Katz et al. utilizes the same coating material as the claimed invention.

Applicant respectfully disagree. Katz et al. discloses encapsulated sodium bicarbonate marketed under the trademark Durkote®. The Durkote® products used as chemical leavening agents are encapsulated by fluid bed techniques. Applicant provide below evidence that it is well known to those skilled in the art that the Durkote® products are encapsulated by fluid bed techniques.

First, Carl J. Pacifico (the inventor of the present invention) has been in the field of food service for 18 years and is an expert in the field of encapsulated ingredients. The Durkote® products referenced in Katz et al. are well known to Mr. Pacifico. From personal communication between Mr. Pacifico and the owner's of the Durkote® production unit, it is known to Mr. Pacifico that the Durkote® products are encapsulated by fluid bed techniques. See paragraph 7 of the Pacifico declaration.

Furthermore, it is also known that the Durkote<sup>®</sup> products are encapsulated by fluid bed techniques from documented references to the Durkote<sup>®</sup> technology as outlined in U.S. Patents, such as U.S. Patent Numbers 4,497,845 and 4,511,584 (attached herewith). See paragraph 7 of the Pacifico declaration.

Therefore, applicant has established that it is well known in the art that the Durkote<sup>®</sup> products disclosed in Katz et al. are encapsulated by fluid bed technique.

It is also well known in the art that coatings provided by fluid bed technique are continuous and substantially non-porous. See paragraph [0010] of the specification and paragraph 7 of the Pacifico declaration.

In contrast to Katz et al., the claimed invention relates to a novel ingredient containing a chemical leavening agent encapsulated with a microporous lipid coating having reticulated passages. The microporous lipid coating of the claimed invention is provided by a technique known as spray-chilling (see paragraph [0023] of the specification). The method of spray-chilling results in a coating which is not substantially continuous and non-porous (see paragraph [0011] of the specification).

Applicant has provided evidence that the coatings of the claimed invention is different than that of Katz et al. The coating of the claimed invention is **not** substantially continuous and **not** substantially non-porous while the coating of the Durkote<sup>®</sup> products disclosed in Katz et al. are continuous and non-porous.

Therefore, due to the differences in the coatings, the composition of the claimed invention would not be expected to possess the same property as the composition of Katz et al. as the Examiner contends. In fact, Table 1 of the specification demonstrates the a chemical leavening agent encapsulated with a microporous coating resulted in good release in baking of the leavening agent. In contrast, the leavening agent encapsulated with a continuous coating resulted in the leavening agent not fully released in baking and brown spots on the dough.

Thus, the composition of Katz et al. does not possess the same property as the composition of the claimed invention.

Accordingly, Katz et al. does not anticipate the claimed invention since the composition disclosed in Katz et al. does not contain a microporous lipid coating as claimed. For the same reasons Katz et al. fails as a §102 reference, it also fails as a reference under §103; i.e., not only is there no disclosure of a microporous lipid coating having reticulated passages, there is further no teaching or suggestion of a microporous lipid coating.

For the above reasons, the presently claimed subject matter is not anticipated or obvious over Katz et al. Accordingly, applicant respectfully requests allowance of pending claims 1-33. If the Examiner has any questions, the Examiner is respectfully requested to contact the undersigned at the telephone number set forth below.

Respectfully submitted,



Edna I. Gergel, Ph.D.  
Registration No. 50,819  
Agent for Applicant

HOFFMANN & BARON, LLP  
6900 Jericho Turnpike  
Syosset, New York 11791  
Tel. (516) 822-3550  
Fax. (516) 822-3582